

Appl. No. 09/233,443

RESPONSE

Docket No. BVL-105

REMARKS

Claims 21-22, 26, 29, 47-53, 55, 66-67, 96-111, 113, and 115 are pending. Claims 53, 55, 98, 100, 104-107, 113 and 115 are indicated as withdrawn. Applicant thanks Examiner Webman for indicating that Claims 99 and 101-102 recite allowable subject matter.

Applicant notes that Claims 55, 98, 104-107, 113, and 115 should not be indicated as withdrawn as they are readable upon the elected species (i.e., a durum ingredient as the plasticized matrix material and a microorganism nutraceutical component as the encapsulant). No new matter is added by this Response.

I. SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENTS

Applicant respectfully requests Examiner Webman to sign and return the Forms PTO-1449 submitted with the Eleventh Supplemental IDS filed March 19, 2004, and the Twelfth Supplemental IDS filed April 8, 2004. Copies of these IDS's and the PTO-stamped postcards are attached.

II. REJECTION UNDER 35 U.S.C. 103(a)

Claims 21-22, 26, 29, 47-52, 66-67, 96-97, 103, and 108-111 as obvious over U.S. Patent No. 5,074,902 (Connick, Jr. et al.) in view of U.S. Patent No. 5,320,669 (Lim et al). This rejection is respectfully traversed.

Connick, Jr. et al. discloses a weed pathogenic fungi that is encapsulated in a wheat gluten matrix. The encapsulated fungi grow onto the surface of the formed products when provided with sufficient light and water (Abstract). As first pointed out in the Amendment filed via certificate of mailing on July 1, 2002, Connick, Jr. et al. does not teach or suggest an encapsulated product comprising a hydrophobic agent for

Appl. No. 09/233,443
RESPONSE
Docket No. BVL-105

controlling the rate of release of the encapsulant. The claimed hydrophobic agent helps delay penetration of water or gastric juices into the plasticized matrix (specification at page 15, lines 15-18). In contrast, the objective in Connick, Jr. et al. is to expose the fungi to water and light so that they will grow (Abstract; col. 4, lines 23-25).

Lim et al. does not overcome the deficiencies of Connick, Jr. et al. Lim et al. discloses a water-resistant biodegradable thermoplastic composition made of a cereal grain and may contain 2 wt.% or less of lubricant additives (col. 1, lines 39-46, col. 2, lines 41-50, and col. 6, lines 7-26). Water-lubricant additives include additives such as oil that increase the water resistance of the composition (col. 6, lines 13-20). A fungicide may be included to prevent growth of fungi. See col. 6, lines 43-50.

The references are not properly combinable. The Examiner asserts that it would have been obvious to add oil to the composition of Connick, Jr. "to achieve the beneficial effect of providing water resistance" (Office Action at page 2). However, adding oil to the composition of Connick et al. would render the composition *nonfunctional* for its intended purpose. As noted, the objective in Connick, Jr. et al. is to expose the encapsulated fungi to water and light so that they will grow, not to provide water resistance (Abstract; col. 4, lines 23-25). There is no reason why one of ordinary skill in the art would seek to provide water resistance to the composition of Connick, Jr. It is axiomatic that if a proposed modification would render the prior art being modified unfit for its intended purpose, then there is no suggestion or motivation to make the proposed modification. See MPEP 2143.01. Additionally, the inclusion of a fungicide as taught by Lim et al. would be in direct contrast to the objective of Connick, Jr. to promote growth of fungi. Thus, it would not have been obvious for one of ordinary skill in the art to make the claimed encapsulated products, food products, and edible products in view of the

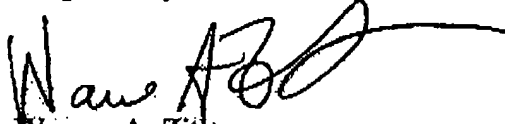
Appl. No. 09/233,443
RESPONSE
Docket No. BVL-105

combined teachings of Connick, Jr. et al. and Lim et al. Reconsideration and withdrawal of the rejection are respectfully requested.

III. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application. Any additional fees should be charged to, or any overpayment in fees should be credited to, Deposit Account No. 501032 (Docket #BVL-105).

Respectfully submitted,


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Attachments:

Eleventh Supplemental IDS filed March 19, 2004 and stamped PTO-postcard;
Twelfth Supplemental IDS filed April 8, 2004 and stamped PTO-postcard.